

*NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.*

**Four J. Food Corp. d/b/a Park Avenue Gourmet and Local 169, Union of Needletrades, Industrial and Textile Employees, AFL-CIO-CLC. Case 2-CA-33721-1**

November 9, 2001

**DECISION AND ORDER**

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN  
AND WALSH

On a charge filed by Local 169, Union of Needletrades, Industrial and Textile Employees, AFL-CIO, CLC (the Union) on April 26, 2001, the General Counsel of the National Labor Relations Board issued a complaint on June 29, 2001, against Four J. Food Corp. d/b/a Park Avenue Gourmet, the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On October 1, 2001, the General Counsel filed a Motion for Summary Judgment and memorandum in support with the Board. On October 3, 2001, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

**Ruling on Motion for Summary Judgment**

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letters dated August 29 and September 5, 2001, extended the Respondent's time to file an answer to the complaint and notified the Respondent that unless an answer was received by September 7 and 12, 2001, respectively, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, a corporation with an office and place of business in New York, New

York, has been engaged in the sale of food and other goods to the public.

Annually, the Respondent, in conducting its business operations, derives gross revenues in excess of \$500,000, and purchases products, goods, and materials valued in excess of \$5000 directly from suppliers located outside the State of New York.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

At all material times, Seak Kwang Ha held the position of the Respondent's president, and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent acting on its behalf.

In about February 2001, the Union commenced an organizational campaign among the Respondent's employees. On April 17, 2001, the Union filed a petition in Case 2-RC-22388 with the Board, and on that same date the Regional Director for Region 2 faxed a copy of the petition to the Respondent.

On about April 17, 2001, the Respondent discharged its employee Angel Delgado. Since that date, the Respondent has failed and refused to reinstate, or offer to reinstate, Delgado to his former position of employment.

The Respondent engaged in the conduct set forth above because Delgado joined and assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

In about early June 2001, the Respondent, by Seak Kwang Ha, in his office at the Respondent's facility, interrogated employees about their union activities and the union activities of other employees.

**CONCLUSIONS OF LAW**

1. By discharging Angel Delgado and refusing to offer him reinstatement to his former position, the Respondent has discriminated in regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(3) and (1) of the Act.

2. By interrogating employees about their union activities and the union activities of other employees, the Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

3. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

**REMEDY**

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and

desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) by discharging Angel Delgado on April 17, 2001, we shall order the Respondent to offer him full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed. We also shall order the Respondent to make Delgado whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in the manner set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent also shall be required to remove from its files any reference to Delgado's unlawful discharge, and notify him in writing that this has been done and that the discharge will not be used against him in any way.

#### ORDER

The National Labor Relations Board orders that the Respondent, Four J Food Corp. d/b/a Park Avenue Gourmet, New York, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against employees because they join or assist Local 169, Union of Needletrades, Industrial and Textile Employees, AFL-CIO, CLC, or engage in concerted activities, or to discourage employees from engaging in such activities.

(b) Interrogating employees about their union activities and the union activities of other employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Angel Delgado full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make Angel Delgado whole for any loss of earnings and other benefits suffered as a result of his unlawful discharge, with interest, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge of Angel Delgado and, within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, so-

cial security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in New York, New York, copies of the attached notice marked "Appendix."<sup>1</sup> Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 17, 2001.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. November 9, 2001

---

Peter J. Hurtgen,	Chairman
-------------------	----------

---

Wilma B. Liebman,	Member
-------------------	--------

---

Dennis P. Walsh,	Member
------------------	--------

(SEAL) NATIONAL LABOR RELATIONS BOARD

#### APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

---

<sup>1</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT discharge or otherwise discriminate against you because you join or assist Local 169, Union of Needletrades, Industrial and Textile Employees, AFL-CIO, CLC, or engage in concerted activities, or to discourage you from engaging in such activities.

WE WILL NOT interrogate you concerning your union activities and the union activities of other employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Angel Delgado full reinstatement to his former job or, if that job no longer exists, to a substantially

equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Angel Delgado whole for any loss of earnings and other benefits suffered as a result of his unlawful discharge, with interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharge of Angel Delgado and, within 3 days thereafter, WE WILL notify him in writing that this has been done and that the discharge will not be used against him in any way.

FOUR J. FOOD CORP D/B/A PARK AVENUE  
GOURMET